

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) made this 10th day of August, 2016 between the **Council of Scientific and Industrial Research**, a Society registered under the Societies Registration Act (XXI of 1860), having its Registered Office at Anusandhan Bhavan, 2, Rafi Marg, New Delhi – 110 001 through its constituent laboratory **CSIR - Central Building Research Institute**, premier Research **INSTITUTE** having its Registered Office at Roorkee – 247 667, Uttarakhand (hereinafter called '**INSTITUTE**' which expression shall where the context so admits include its successors and permitted assigns) of the one part;

And

National Research Development Corporation, an Enterprise of Department of Scientific and Industrial Research, Ministry of Science and Technology, Govt. of India incorporated under the Indian Companies Act, 1956 and having its Registered Office at "Anusandhan Vikas", 20-22, Zamroodpur Community Centre, Kailash Colony Extension, New Delhi – 110 048 (hereinafter called '**the CORPORATION**' which expression shall where the context so admits include its successors and permitted assigns) of the other part.

WHEREAS the **CORPORATION** has been established with the object, inter alia of development, promotion, licensing and commercial exploitation of technology, know-how and inventions, including the technical and engineering know-how.

WHEREAS **INSTITUTE** is committed to serve the people through R&D in the development process and maintains linkages at international and national level and has been assisting the building construction and building material industries in finding timely, appropriate and economical solutions to the problems of building materials, health monitoring and rehabilitation of structures, disaster mitigation, fire safety, Energy efficient rural and urban housing. (hereinafter called the **DEVELOPMENTS**) which can be transferred to industries for commercial exploitation and for social benefits.

AND WHEREAS the **INSTITUTE** has, subject to the reservations and exceptions hereinafter contained agreed to entrust the work of the licensing and exploitation of its **DEVELOPMENTS** to the **CORPORATION** on non-exclusive basis.

And whereas the Institute shall function as **PRINCIPAL** and the Corporation as **AGENT/CONSULTANT** for licensing of the **DEVELOPMENTS**

DEFINITIONS:

CORPORATION: Means National Research Development Corporation

DEVELOPMENTS: Mean inventions/innovations, patents, formulations, know-how/ processes developed by **INSTITUTE**.



INSTITUTE: Means CSIR- Central Building Research Institute, Roorkee.

Party: Individual party

Parties: Both the parties

PROPRIETARY INFORMATION: information related to **DEVELOPMENTS**

RECIPIENT: the information receiving party

TRANSFEROR: information provider

NOW THIS INDENTURE WITNESSETH AS UNDER:

1. In pursuance of the said MOA and subject to the reservations and exceptions hereinafter contained, and in consideration of the payment agreed to be made by the **CORPORATION** of 70% of the gross earning from premia and royalties arising from the exploitation of such **DEVELOPMENTS** to the **INSTITUTE**, the **INSTITUTE** hereby agrees as follows:
 - (a) The **CORPORATION** shall have a non exclusive right to market the **DEVELOPMENTS** through out India and abroad. In the circumstances where the **DEVELOPMENTS** are directly licensed or to be licensed hereinafter by the **INSTITUTE**, without any assistance of the **CORPORATION**, the **CORPORATION** shall not claim for the sharing of premium and royalty from such licensing.
 - (b) That the **CORPORATION** shall collect gross earnings from Premia and Royalties arising from the exploitation of the **DEVELOPMENTS** licensed by the **CORPORATION**.
 - (c) That the **CORPORATION** will deposit the whole service tax and will give to **INSTITUTE** a declaration to this effect and thereafter the **CORPORATION** shall pay prescribed share as mentioned in this MOA to the **INSTITUTE**.
 - (d) This MOA shall not apply to any **DEVELOPMENTS** which have been already assigned to the **CORPORATION** through Council for Scientific & Industrial Research, (CSIR) New Delhi by the **INSTITUTE** prior to this MOA.
2. The **INSTITUTE**, hereby covenants with the **CORPORATION** as follows:
 - (a) The **INSTITUTE** shall, to the extent necessary, give to the **CORPORATION** such assistance and information relating to the said **DEVELOPMENTS** and mode of working and using the same and all processes connected therewith as may be necessary for enabling the **CORPORATION** to use, explore commercial exploitation of the said



DEVELOPMENTS and to identify clients to the best advantage of both the **INSTITUTE** and **CORPORATION**

- (b) The **INSTITUTE** shall keep the **CORPORATION** informed of any further discovery and improvement in the said **DEVELOPMENTS** so that the **DEVELOPMENTS** are competitive in the market. Responsibility for seeking IPR etc on the improvements has with the **INSTITUTE** who is the owner of the said **DEVELOPMENTS**.
 - (c) The renewal of the patent(s), opposition of the patent application and filing of the infringement suits shall be the responsibility of the **INSTITUTE** and all expenses incurred thereupon shall be borne by the **INSTITUTE** or its parent organization CSIR. **CORPORATION** shall provide full support to the extent possible in case such situation arises on the **DEVELOPMENTS** licensed by the **CORPORATION**.
- 3. The **INSTITUTE** also agrees to provide to the **CORPORATION** documented technical information on the mode of working and using the same by the Industry, as may be necessary to commercialize the said **DEVELOPMENTS**.
 - 4. The **INSTITUTE** will be free to modify or improve the **DEVELOPMENTS** at its end. All **DEVELOPMENTS** transfer, license or marketing MOAs with the third party will be under the national and international norms of IPR. The Institute shall also assign exclusive marketing rights of such modification/improvements.
 - 5. For the **DEVELOPMENTS** to be licensed by the **CORPORATION**, the **INSTITUTE** agrees to provide a successful demonstration to the licensee(s) of the **CORPORATION** at the **INSTITUTE** on the laboratory scale or any larger scale on which the **DEVELOPMENTS** may have been developed by the **INSTITUTE**, within 60 days of the signing of the license MOA by the licensee(s) with the **CORPORATION** to familiarize appropriately qualified personnel of the licensee(s) and provide expert assistance to the licensee(s) for implementation of the licensed **DEVELOPMENTS** and to provide such certification of successful demonstration, duly signed by the licensee(s), to the **CORPORATION** immediately after demonstration.
 - 6. The **CORPORATION** agrees to give wide publicity to the availability of the **DEVELOPMENTS** agreed by the **INSTITUTE** for commercial exploitation and also agrees to generate necessary market data / profiles to promote speedy and effective licensing and commercialization of the said **DEVELOPMENTS**.
 - 7. The terms & conditions for licensing the **DEVELOPMENTS** shall be mutually decided by the **INSTITUTE** and the **CORPORATION** on case to case basis and the same terms and conditions shall be offered to the prospective licensees by the **CORPORATION** and the **INSTITUTE** as well.



10/08/16

8. In case the **CORPORATION** does not commercialize the agreed **DEVELOPMENTS** within five years from the date of signing of this MOA with the **INSTITUTE**, the parties shall meet and decide on the further course of action and, if there are no immediate prospects of commercialization, which decision shall be that of the **INSTITUTE**, the **CORPORATION** shall not use the information relating to such **DEVELOPMENTS** in any manner whatsoever, thereafter.

** through its head quarter i.e CSIR, New Delhi*

9. That in consideration of the above covenants and conditions contained in the MOA, the **INSTITUTE** hereby agrees to keep indemnified the **CORPORATION** and its successors, executors, administrators, licensee(s) and legal representatives at all times against all possible claims or demands, damages or any action or proceedings commenced by the **INSTITUTE** or any person or persons through **INSTITUTE** or against **INSTITUTE** or the **CORPORATION** before any Court, tribunal or fora. All costs/legal expenses that may arise from such proceedings shall be borne by the **INSTITUTE** as well as **CORPORATION** in respect of defect in the technology/ fraud/ misrepresentation or any other similar legal remedy/ claim, which may arise out of the said technology in the same proportions as the benefits, royalty and premium are shared between **INSTITUTE** and **CORPORATION**.

10. If either party fails to fulfill its respective obligations as set out in the aforesaid clauses of this MOA, both parties shall urgently consult each other with a view to correct the default by the party concerned. If even thereafter the default is not rectified by the defaulting party, the other party may terminate this MOA by giving thirty (30) days notice in writing to the defaulting party provided that such termination shall not affect the rights of the parties to MOA which have been accrued prior to such termination.

11. Upon such termination as set out in Clause 10:

- (i) The license(s) granted by the **CORPORATION** shall continue for the period agreed between the **CORPORATION** and its licensee(s) concerned. However, the existing licensee(s) of the **CORPORATION** shall have the right to continue to use the **DEVELOPMENTS** even after the expiry of the period of License MOA(S). After expiry of period of license period it will be based on mutually agreed terms and conditions (marginal license fee or royalty). The **CORPORATION** also agrees not to grant any further license(s) of the commercialized **DEVELOPMENTS** to any further party(ies). All amounts accrued for payment to the **INSTITUTE** by the **CORPORATION** on the date of termination shall be paid within thirty (30) days of such termination or as and when they become due whichever is later. As for payment accruing thereafter from such commercialized **DEVELOPMENTS** in respect of which license(s) have already been granted by the **CORPORATION** and subsisting on the date of termination of this MOA, the **CORPORATION** will continue to remit to the **INSTITUTE** as if the MOA is in full force and effect; and

- (ii) The **DEVELOPMENTS** agreed to the **CORPORATION** by the **INSTITUTE** which have not been commercialized by the **CORPORATION** shall stand withdrawn by the **INSTITUTE**. Thereafter the **CORPORATION** shall not use documents of such **DEVELOPMENTS** in any manner whatsoever.

12. **Confidentiality**

Each of the PARTIES agrees to hold PROPRIETARY INFORMATION received from the other PARTY in confidence and to protect the other PARTY's PROPRIETARY INFORMATION from disclosure to the public and to third parties. Accordingly, each PARTY shall employ protective measures fully commensurate with those used by the PARTY to protect its own trade secrets and other confidential information. Such measures shall include restricting access to the other PARTY's PROPRIETARY INFORMATION only to the PARTY's employees, consultants, and contractors (collectively referred to hereinafter as "AGENTS") whose access is reasonably necessary to carry out the PURPOSE of this MOA after such AGENTS have been informed of the proprietary nature of the other PARTY's PROPRIETARY INFORMATION and who have a legally enforceable obligation to the RECIPIENT that would conform to the obligations of this MOA. The RECIPIENT further agrees to use the PROPRIETARY INFORMATION received from the TRANSFEROR only for the PURPOSE of this MOA.

13. The RECIPIENT shall not be liable for the disclosure or use of information that RECIPIENT can demonstrate by competent physical evidence that the **DEVELOPMENTS**:

- a) at the time of disclosure has been published, patented or is otherwise publicly available; or
- b) after disclosure, becomes publicly available other than through a breach of this MOA; or
- c) is known to RECIPIENT prior to receipt from the TRANSFEROR; or
- d) becomes known to RECIPIENT from a source that legally obtained such information without an obligation of confidentiality or nondisclosure; or
- e) was developed without reference to any PROPRIETARY INFORMATION provided pursuant to this MOA; or
- f) is freely disclosed by the owner of the PROPRIETARY INFORMATION to a third party without an obligation of confidentiality or nondisclosure; or
- g) is disclosed pursuant to law, regulation or lawful order or process. In the event RECIPIENT is subject to such law, regulation, order or process, RECIPIENT will notify the TRANSFEROR of the disclosure requirement, at least 1 (one) working week, in advance of the required disclosure to be made, so as to permit the TRANSFEROR to oppose or limit such disclosure; or
- h) is approved in writing by the TRANSFEROR for disclosure to a third party by RECIPIENT.


14. **ARBITRATION AND DISPUTE RESOLUTION**

- a) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this MOA including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this MOA, such disputes or differences shall be referred to an Arbitral Bench consisting of three Arbitrators, one each to be appointed by each party and the two Arbitrators shall appoint a third Arbitrator who shall be the Presiding Arbitrator. A reference to the Arbitration under this Clause shall be deemed to be submission within the meaning of the Arbitration and Conciliation Act, 1996 (as amended from time to time) and the rules framed there under for the time being in force.
- i. The venue of the Arbitration shall be at Delhi.
 - ii. The language of arbitration proceedings will be English only.
 - iii. Each party shall bear and pay its own cost of the arbitration proceedings unless the Arbitrator otherwise decides in the Award.
 - iv. The provisions of this Clause shall not be frustrated, abrogated or become inoperative, notwithstanding this MOA expires or ceases to exist or is terminated or revoked or declared unlawful.
- b) If however, the INSTITUTE does not make any claim or demand or raise any dispute or difference in terms of this Clause within one year from the date on which such claim or demand arises, the INSTITUTE shall be deemed to have waived and abandoned such claim or demand or the right to raise such dispute or difference against the NRDC.
- c) The High Court of Delhi at New Delhi and Courts subordinate to it shall have exclusive jurisdiction in all matters concerning this MoA including any matter arising out of the Arbitration proceedings or any Award made therein.
15. The validity of this MOA is for 10 years and may be extended for a further period by mutual consent of both the parties. The confidentiality is to be kept for a further period of 10 years after expiry of this MOA.
16. This MOA can be amended/changed/modified by the mutual consent of both the parties herein as and when required.



IN WITNESS WHEREOF, both the parties herein set their respective hand on the day, month and year first above written in the presence of the following witnesses.


For and on behalf of
National Research Development
Corporation, New Delhi



(Dr. H. Purushotham)
Chairman and Managing Director

For and on behalf of
Central Building Research Institute
Roorkee



(Dr. N. Gopalakrishnan)
Director


Witnesses:

1. Signature 
Name: D.C. Joshi
Address: NRDC, New Delhi

2. Signature 
Name: Amit Ranjan
Address: NRDC, New Delhi

Witnesses:

1. Signature 
Name: Y. PANDEY
Address: Head, PBD, CSIR CBR I

2. Signature 
Name: (Dr. AK MINOCHA)
Address: Chief Scientist
CSIR-CBRI
Roorkee